

COMPLAINT OF SEXUAL HARASSMENT

FROM LINDA KIRNAN

**AGAINST ONEIDA COUNTY CLERK SANDRA
DEPERNO**

INVESTIGATION RESULTS



Complaint

On April 23, 2009, Linda Kirnan, Labor Relations Representative for the United Public Service Employees Union (hereinafter “UPSEU”) sent a letter to Oneida County Legislator Michael Waterman, Chair of the Internal Affairs Committee. The letter contained numerous allegations of labor issues related to Oneida County Clerk Sandra DePerno. The letter was copied to the County’s Director of Labor Relations, John Talerico.

In said letter, Ms. Kirnan alleges as follows:

“I was also recently made aware that her (i.e. County Clerk Sandra DePerno’s) husband, Larry DePerno is, again, going behind the counter of Utica DMV office, sexually harassing the women there, as well as sitting behind the counter watching everything they do.”

Section O of the Oneida County Personnel Rules, entitled “Statement of Policy and Procedure Regarding Sexual Harassment” states that complaints of sexual harassment shall be “investigated promptly and in as confidential a manner as possible.”

Although the letter from Ms. Kirnan was not signed by any actual County employee, the County commenced an investigation of the sexual harassment complaint.

Investigation

On May 6, 2009, Mr. Talerico sent a letter to Ms. Kirnan, requesting the names of the County employees who made the allegations.

On May 6, 2009, Ms. Kirnan responded with a letter listing the names of seventeen employees. The letter did not designate which of these employees, if any, had made the complaint of sexual harassment.

Mr. Talerico interviewed every County employee that worked for the Department of Motor Vehicles (“DMV”), from both the Rome and Utica office. Mr. Talerico also interviewed Ms. Kirnan and Robert Stephens of UPSEU, Ms. DePerno and Deputy County Clerk Diane Abraham. Employees of the New York State Department of Motor Vehicle were also contacted and questioned by telephone, by counsel.

Ms. DePerno was told to have her husband contact Mr. Talerico and schedule a time to discuss the allegations. Mr. DePerno chose not to be interviewed.

Allegations of Sexual Harassment through a Hostile Work Environment

Allegation #1:

Employee #6 alleged that Larry DePerno made an inappropriate comment to her during 2009 at the Utica DMV office. Specifically, Employee #6 alleged that she was complaining to Mr. DePerno because of his use of the DMV bathroom facilities and he was alleged to have made a comment to Employee #6 relative to such use. No other employee overheard this alleged conversation. Employee #6 never filed any sort of written complaint about the alleged conversation with anyone.

There are no allegations or statements indicating that anyone ever reported the alleged conversation to Ms. DePerno or that Ms. DePerno had any knowledge of the alleged conversation.

Allegation #2:

Employee #6 alleged that Larry DePerno touched her hair on two occasions and told her “Wow, you smell really good” on one occasion during 2009 at the Utica DMV office.

No other employee observed the alleged conduct or overheard the alleged statement. Employee #6 never filed any sort of written complaint about the alleged conduct or the alleged statement with anyone.

There are no allegations or statements indicating that anyone ever reported the alleged conduct or the alleged statement to Ms. DePerno or that Ms. DePerno had any knowledge of the alleged conduct or the alleged statement.

Allegation #3:

Employee #1 alleged that Larry DePerno touched her hair and/or ear, and told her words to the effect that she “smelled pretty” on several occasions during the time period of December of 2008 through April of 2009. Employee #1 alleged that she would always tell Mr. DePerno to leave her alone.

During the interviews, three of Employee #1’s co-workers alleged that they observed this conduct during this time period.

Employee #1 never filed any sort of written complaint about the alleged incidents with anyone. There are no allegations or statement that anyone reported the alleged incidents to Ms. DePerno prior to April 17, 2009, or that Ms. DePerno had any knowledge of the alleged incidents prior to April 17, 2009.

On April 16, 2009, Employee #1 alleged that Larry DePerno again touched her hair and ear, and told her that she “smelled pretty.” Employee #1 again told Mr. DePerno to leave her alone. Employee #1 then made a verbal complaint to Supervisor Lisa Zane.

On April 17, Ms. Zane spoke to Mr. DePerno and told him that he needed to stop touching Employee #1’s hair and ears. Later that day, Ms. DePerno was informed of the complaint of Employee #1.

Ms. DePerno alleges that she discussed the allegations with her husband that day and that he agreed to he would not go into any employee area of the DMV anymore.

It is undisputed that Mr. DePerno has not been in any employee area of the DMV since April 17, 2009.

Analysis of Allegations of Sexual Harassment through a Hostile Work Environment

It is unnecessary to determine whether or not Larry DePerno actually made the alleged comments or actually participated in the alleged conduct. Further, it is unnecessary to determine whether these alleged comments and conduct, if made, were sufficient to create a hostile work environment.

These determinations are not necessary because there is no evidence that Sandra DePerno had knowledge of any of the above allegations related to her husband until April 17, 2009. It also appear that once she was informed of the allegations made by Employee #1, she immediately discussed the allegations with her husband and he agreed not to go into the employee area of DMV. There is no evidence of Mr. DePerno being present in any employee area of DMV after April 17, 2009.

Further, Mr. DePerno is not employed by the County Clerk and has no supervisory or management role with the DMV.

Based on the above, there is no evidence that Ms. DePerno encouraged, condoned or approved any harassing conduct against her employees.

Allegations of Illegal Retaliation

Allegation #1:

Employee #1 stated that on April 17, 2009, Ms. DePerno asked her about her complaint about Larry DePerno. Employee #1 alleged that Ms. DePerno stated that her husband was “just joking” and further stated that “I can terminate you and put you on unemployment.”

In contrast, Ms. DePerno stated that she did tell Employee #1 that her husband was “just joking” but denies threatening to terminate Employee #1’s employment.

Employee #1 has not had her employment terminated or suspended and is still employed in the same job title with the Department of Motor Vehicles.

Allegation #2:

Employee #1 alleges that Ms. DePerno transferred her from the Utica DMV office to the Rome DMV office on April 27, 2009, in retaliation for making a complaint of sexual harassment. Employee #1 testified that after Ms. Kirnan wrote a letter to Legislator Waterman, which included a written allegation of sexual harassment, Ms. DePerno then reversed her decision and transferred Employee #1 back to the Utica DMV office.

Ms. DePerno alleged that for business reasons, she simultaneously transferred Employee #1 to the Rome office and transferred Employee #18 from the Rome office to the Utica office. Specifically, Ms. DePerno alleged that the transfers were made to allow Employee #18 to work directly under Supervisor Lisa Zane, due to alleged “problems” with Employee #18’s performance, and to allow Employee #1 to assist with “cleaning up” the Rome DMV office.

Ms. DePerno alleges that after the transfer, she met with Robert Stephens of UPSEU. Mr. Stephens told her that UPSEU would be filing a grievance on behalf of Employee #1, as she was now working out of title. At the meeting, Ms. DePerno agreed to switch the employees back to their original assignments to avoid a grievance. Mr. Stephens confirmed this conversation with Ms. DePerno.

Ms. DePerno was not aware of the actual contents of the letter from Ms. Kirnan until April 28, 2009, when it was faxed to her by an employee of the Rome Daily Sentinel newspaper. Ms. DePerno was able to produce a copy of the Kirnan letter faxed to her from the Rome Sentinel on April 28, 2009, received the day after she had already returned Employee #1 to the Utica DMV office.

Analysis of Allegations of Illegal Retaliation

In regards to the alleged threat of termination of employment made to Employee #1, it is unnecessary to determine whether or not Ms. DePerno actually made the alleged comment. It is undisputed that Employee #1's employment was not terminated, and she did not suffer any suspension or loss of wages or benefits. Therefore there was no adverse employment action taken against Employee #1.

In regards to the transfer of Employee #1 for a one week period to the Rome office, the first necessary element to a claim of retaliation is that the employee suffered an adverse employment action. When Employee #1 was temporarily transferred, she did not suffer a demotion or any decrease in salary or benefits. Therefore, there was again no adverse employment action against Employee #1."

As there were no adverse employment actions taken against Employee #1, there can be no finding of illegal retaliation on the part of Ms. DePerno.

Date: _____

JOHN P. TALERICO

Oneida County Commissioner of Personnel

W K T V U t i c a

**COMPLAINT OF SEXUAL HARASSMENT
FROM LINDA KIRNAN**

**AGAINST ONEIDA COUNTY CLERK SANDRA
DEPERNO**

DETERMINATION



W K T V U t i c a

Complaint

On April 23, 2009, Linda Kirnan, Labor Relations Representative for the United Public Service Employees Union (hereinafter "UPSEU") sent a letter to Oneida County Legislator Michael Waterman, Chair of the Internal Affairs Committee. The letter contained numerous allegations of labor issues related to Oneida County Clerk Sandra DePerno. The letter was copied to the County's Director of Labor Relations, John Talerico.

In said letter, Ms. Kirnan alleges as follows:

"I was also recently made aware that her (i.e. County Clerk Sandra DePerno's) husband, Larry DePerno is, again, going behind the counter of Utica DMV office, sexually harassing the women there, as well as sitting behind the counter watching everything they do."

Section O of the Oneida County Personnel Rules, entitled "Statement of Policy and Procedure Regarding Sexual Harassment" states that complaints of sexual harassment shall be "investigated promptly and in as confidential a manner as possible."

Although the letter from Ms. Kirnan was not signed by any actual County employee, the County commenced an investigation of the sexual harassment complaint.

Determination

There is no evidence that Oneida County Clerk Sandra DePerno encouraged, condoned or approved a hostile work environment

There is no evidence that Oneida County Clerk Sandra DePerno took any illegal retaliatory actions against any of her employees.

Date: _____

JOHN P. TALERICO

Oneida County Commissioner of Personnel

**COMPLAINT OF VIOLATIONS OF LABOR LAWS
AND COLLECTIVE BARGAINING AGREEMENT**

FROM LINDA KIRNAN

**AGAINST ONEIDA COUNTY CLERK SANDRA
DEPERNO**

INVESTIGATION RESULTS



Complaint

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In said letter, Ms. Kirnan alleges as follows:

- Allegations regarding staffing decisions made by Ms. DePerno in regards to the Rome office, the Utica office and the satellite office of the Department of Motor Vehicles (“DMV”).
- Allegations of failure to allow employees to take full lunch breaks and/or to take other breaks.
- Allegations of failure to allow employees to utilize vacation time.
- Allegations that employees were told to “watch their step for having publicly supporting Rick Allen during the campaign.”

Investigation

On May 6, 2009, Mr. Talerico sent a letter to Ms. Kirnan, requesting the names of the County employees who made the allegations.

On May 6, 2009, Ms. Kirnan responded with a letter listing the names of seventeen employees. The letter did not designate which of these employees, if any, had made each particular complaint.

Mr. Talerico interviewed every County employee that worked for the DMV, from both the Rome and Utica office. Mr. Talerico also interviewed Ms. Kirnan and Robert Stephens of UPSEU, Ms. DePerno and Deputy County Clerk Diane Abraham. Employees of the New York State Department of Motor Vehicle were also contacted and questioned by telephone.

The allegations regarding staffing decisions made by Ms. DePerno were not investigated, as these decisions are clearly within her discretion as an independently elected official.

FINDINGS

Allegations of failure to allow employees to take full lunch breaks and/or to take other breaks.

There were no employees who stated that they were denied a full lunch break or denied any other break.

On one occasion, Employee# 21 was told by Ms. DePerno to return a few minutes early from a fifteen (15) minute break, because there was a line of customers waiting for service. Employee #21 stated that she never discussed this incident with Linda Kirnan or anyone from UPSEU.

Allegations of failure to allow employees to utilize vacation time.

At the time of the interviews, none of the interviewed employees had been denied the right to utilize vacation time. It should be noted that Section 11.2 (B) of the collective bargaining agreement between the County & UPSEU states as follows: "Vacation to be taken at a time mutually agreeable to the County and employee".

Allegations that employees were told to "watch their step for having publicly supporting Rick Allen during the campaign."

There were no employees who stated that they were told by Ms DePerno to "watch their step for publicly supporting Rick Allen during the campaign".

Determination

There is no evidence that Oneida County Clerk Sandra DePerno violated either New York State Labor Law or the collective bargaining agreement.

Date: _____

JOHN P. TALERICO

Oneida County Commissioner of Personnel

